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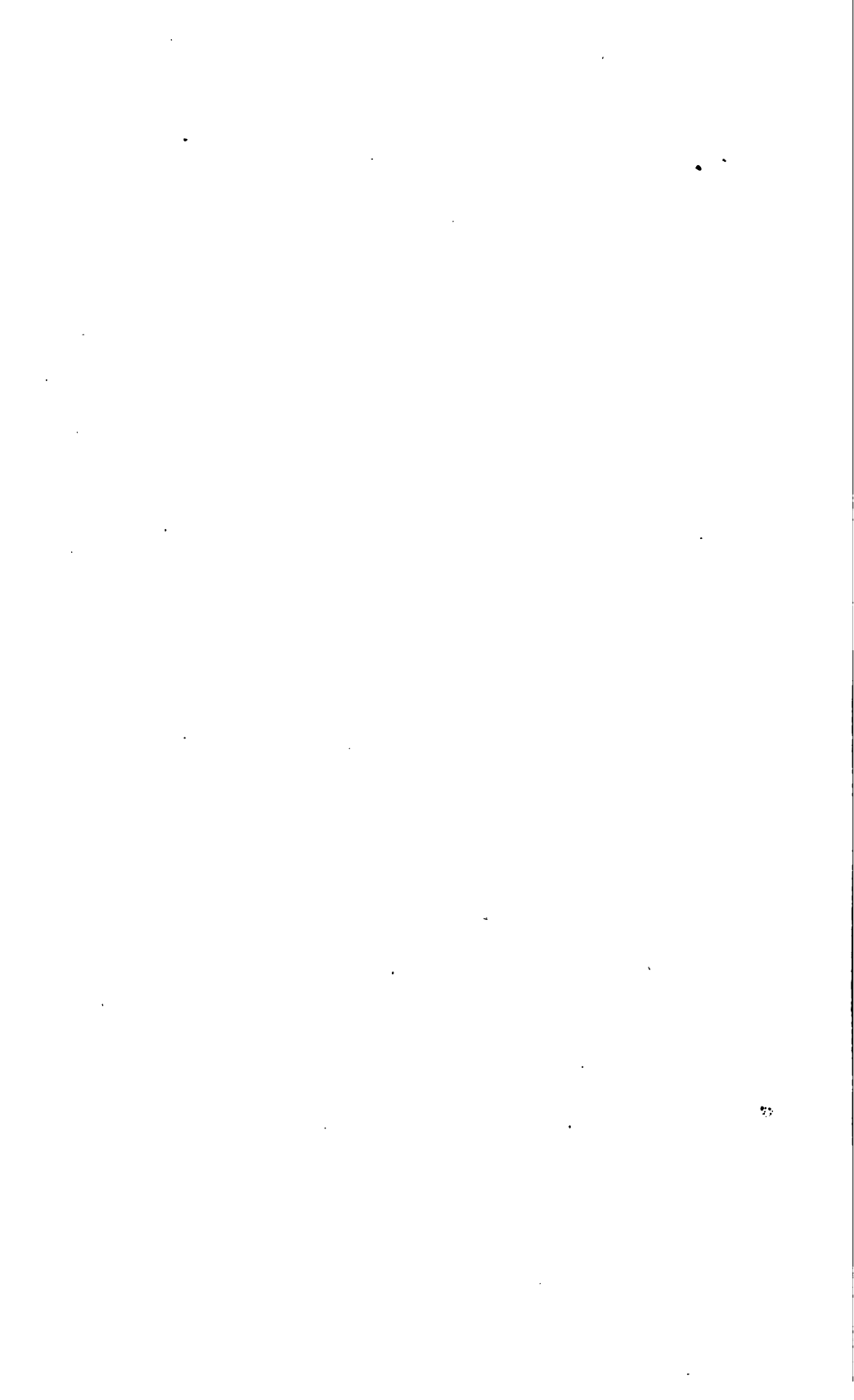
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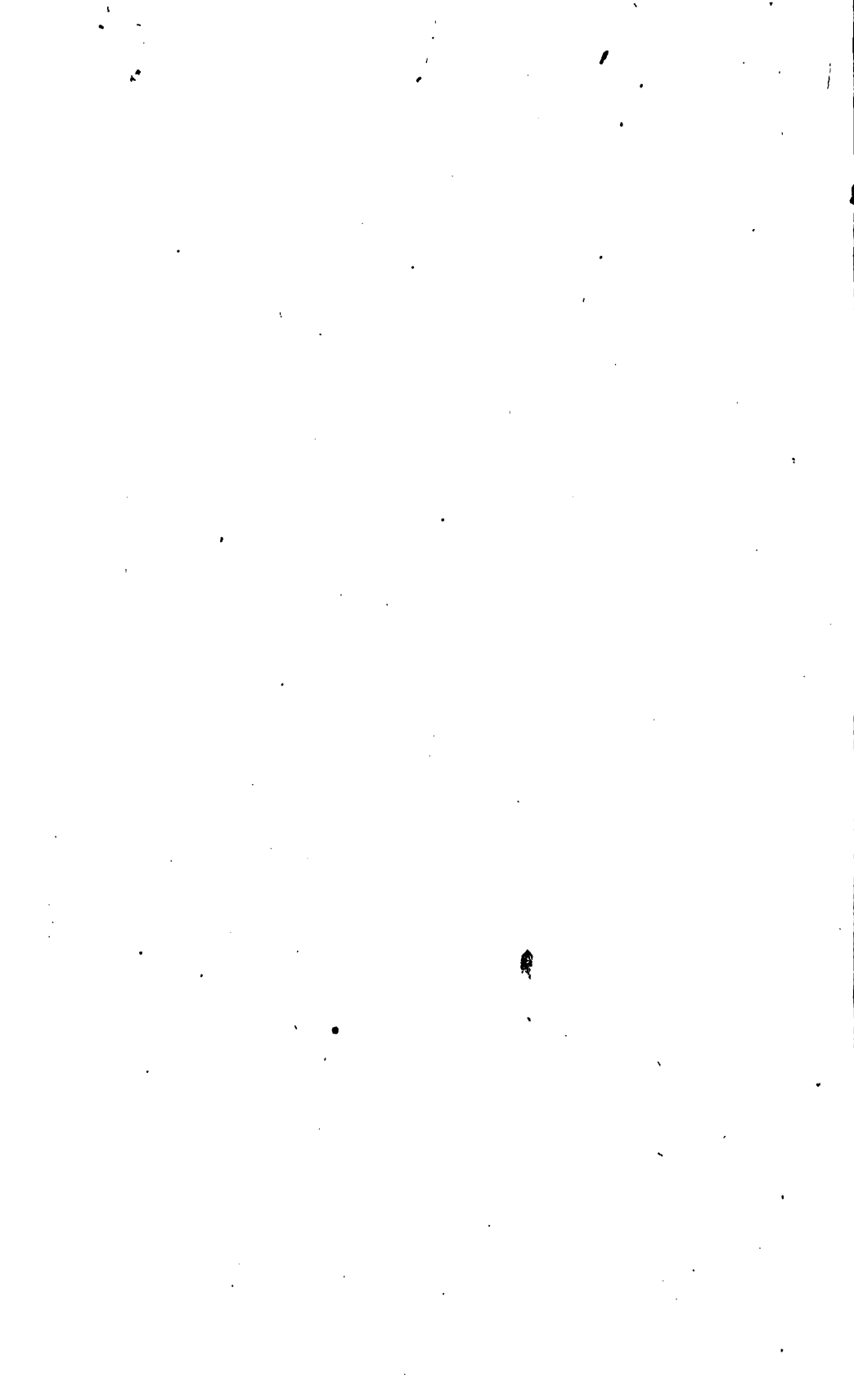
HARVARD UNIVERSITY



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S P E E C H.

OF

HIRAM KETCHUM, ESQ.,

BEFORE THE

BOARD OF EDUCATION,

IN BEHALF OF THE

PUBLIC SCHOOL SOCIETY,

IN REPLY TO A

REPORT OF A COMMITTEE OF SAID BOARD.

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SPEECH.

MR. PRESIDENT AND GENTLEMEN OF THE BOARD OF EDUCATION :

By a report of a committee of your board, dated January 20th, 1847, the following resolution is recommended to your adoption :

Resolved, That in the opinion of the Board of Education the Public School Society has no right, since the passage of the act, entitled, " An act more effectually to provide for common school education in the city and county of New-York," passed May 7, 1844, to establish any new school ; and that if any such schools have been or may be established, they are not entitled to a participation in the apportionment of the school monies."

It is quite natural that the Public School Society should feel a deep interest in the deliberations and final action of your board upon this resolution. The society has, therefore, respectfully requested your board to allow an expression of their views, which request has been kindly and promptly granted ; and, therefore, on behalf of the society, I now appear to solicit your attention for a few moments.

The Board of Education is entrusted with the school fund for distribution, in the mode pointed out by law. The Public School Society is entitled to a portion of this fund, and the great practical question is, by what rule shall the amount be ascertained, which the society is entitled to receive ? Shall the society draw from this fund according to the number of children over four and under sixteen years of age, who shall have actually attended the schools of the society the preceding year without charge ? or shall it draw only for the children of the above description, taught in such of those schools as were established on or before the 7th day of May, 1844, the date of the act, and were in existence at that time ? Confessedly, there have been schools opened and established by the society since the passage of the act, in which children have been gratuitously educated. Are these schools entitled to a participation in the fund ?

The answer to these questions must be looked for in the law itself. That law contains the declaration of trust, under which the Board of Education receives the money. The law provides the rule of duty, as well for this Board, as for the Public School Society.

To the law, then, let us look. The 12th section of the act of 1844 says:—"It shall be the duty of the Board of Education to apportion all the school moneys, except so much as shall have been raised for the purpose of establishing and organizing new schools, to each of the several schools provided for by this act, and the acts mentioned in the preceding section, according to the number of children, over four and under sixteen years of age, who shall have actually attended such school without charge the preceding year.

Among the schools provided for by the act are those of the Public School Society. The exception quoted, of so much money "as shall have been raised for the establishing and organizing new schools," refers to the money raised under the act for the special purpose of building school houses, which is a distinct fund from the school fund proper. The 12th section farther provides for any school that shall have been organized since the last annual apportionment. The provision is for *any* school. Then comes the exception: "But *no* school shall be entitled to the portion of the school moneys in which the doctrine or tenets of any Christian sect shall be taught," &c.

Now, the Legislature have prescribed who shall *not* receive from the school fund; and, according to every sound rule of construction, it is not competent for any persons acting under the law to add to the negative exception. The general words of the law embrace all children taught in the schools, within the prescribed ages. The exception excludes children taught in schools where sectarian doctrines are inculcated. None others can be excluded. Therefore, children educated in the schools opened since the passage of the act of May, 1844, cannot be excluded.

But how shall the Board of Education be informed of the number of scholars taught in the schools of the Public School Society? The 36th section of the act provides for the transmission of this information. The trustees shall, on or before the 15th day of February in every year, make and transmit a report in writing to the Board of Education. What information shall it contain? The same section furnishes the answer.

1. The whole number of schools within the jurisdiction of the society—specially designating the schools for coloured children.

This certainly means within the jurisdiction *at the time of the report*, and not at the date of the passage of the act.

2. The length of time each school shall have been kept open.

3. The whole number of scholars, over four and under sixteen years of age, which shall have been taught free of expense to such scholars in their schools during the year preceding the first day of February.

4. The average number that has actually attended their schools.

5. The amount of moneys received during the last year from the commissioners of school money, or from the chamberlain of the city, and the purposes for, and the manner in which the same shall have been expended.

6. A particular account of the state of the schools and of the property and affairs of each school under the care of the society.

Now, it will be seen that the trustees of each ward, and the trustees of the Public School Society, are alike bound to report the number of schools *within their jurisdiction*, and the condition of the schools *at the time of making their reports*.

Then, if the schools of the Public School Society, opened and established since the passage of the act of 1844, are within the jurisdiction of the society, it would seem to follow, conclusively, that these schools are entitled to participate in the school moneys. If they are not within such jurisdiction, it follows—not only that they are not entitled to participate, but that the trustees of the society, in reporting the new schools, and claiming a portion of the school fund, have subjected themselves to a penalty under section 37.

The next inquiry is, Whether the schools established by the Public School Society since the 7th of May, 1844, are within the jurisdiction of the society. If they are not, the society has no legal title to them, or control over them. Those who deny this jurisdiction, deny it on the ground that the society has no right to establish such schools. Let us look at the question of right.

What is now the Public School Society, was, originally, incorporated as “The Society for establishing a Free School in the City of New-York, for the education of such poor children as do not belong to, or are not provided for by any religious society.” By the 2d section of this act, passed April 9, 1805, the trustees of the corporation were authorized to establish two or more free schools in the city of New-York, whenever the society might judge it expedient. Here, then, we have a purely benevolent society organized and incorporated. Here is the society, disconnected from any grant of money, from the school fund or any other public fund, operating actively with the means supplied by its members and private contributions.

Thus existing, it had a right by law, the law of its creation, to

build as many school houses, and open as many schools, as it pleased. *Now, with great respect I inquire, when was this original corporate right ever taken from the society?* While I am on this original act, allow me to make another suggestion. The Public School Society is called, in the report of the committee, "a close corporation." The 6th section of the original act enacts, that the Mayor, Recorder, Aldermen and Assistants of the city of New-York shall and may be, *ex officio*, members of said corporation, and that any person who shall subscribe and contribute to the benefit of the said society the sum of eight dollars, shall, *by virtue of such contribution, be a member of the said corporation.* Is that a close corporation? Show me one more open.

By an act for the encouragement of free schools in the city of New-York, passed July 27, 1807, there was granted by the Legislature to this society the sum of 4,000 dollars, for the purpose of erecting a certain building or buildings for the instruction of poor children; and every year thereafter, until the pleasure of the Legislature should be otherwise expressed, an annuity of 1,000 dollars was granted to the society, "for promoting the benevolent objects of said corporation."

In 1808 the title of the corporation was changed to that of the Free School Society of New-York, and its powers were extended "to all children the proper objects of a gratuitous education."

Farther grants to the society, for the purpose of erecting suitable accommodations for the instruction of poor children, were afterwards made by the Legislature. So that the Legislature not only gave the power to build, but the means to execute the power. One of the grants of means is contained in the second section of the act of 5th April, 1817, which allows the Society to appropriate any surplus school money, after the payment of teachers, &c., to the erection of buildings for schools. By the act of 28th April, 1826, the title of the society is again altered to that of "the Public School Society of the city of New-York," and the power is again conferred on the trustees, "from time to time to establish in said city such additional schools as they may deem expedient."

From this recital it will be seen, that the power to build school houses, and establish additional schools, was always possessed by the Public School Society, and is still possessed, unless the power is taken away, as contended, by the act of 1844.

Here let it be remembered, that this right is a chartered right, originally granted, and subsequently confirmed. For the means to purchase ground and build school houses, the society is, and ever has been, dependent upon private or public bounty. The exercise

of the right to build, assumes the possession of the means to do so. Now, supposing the means are in hand, cannot the society employ those means in the erection of new school houses?

It will be observed that I am not now upon the question, whether or not the Legislature has furnished the means to build—that will be considered in another place—but whether this body has taken away the power to build? Has not the society the same power in this respect, that it had when the original act was passed?

It is admitted in the report of the committee, that the section of the act of 1826, authorizing the society to establish such additional schools as it might deem expedient, is now in full force, unless it is repealed by the 50th section of the act of 1844. This same admission might also be extended to the 2d section of the original charter, which, as we have seen, gives the trustees power to establish two or more free schools in the city of New-York. The "50th section of the act of 1844 repeals the acts of 1842 and 1843," and all other acts specially applicable to public or common schools in the city and county of New-York, *as far as the same are inconsistent with the provisions of this act.*

The argument is, that the power to establish new schools, in the Public School Society, is inconsistent with the act of 1844, and is, therefore, repealed. Admitting, for the present, that the Legislature could, in this manner, without the notice required by the statute, divest a corporation of a chartered right, the first question is, did the Legislature regard the power to establish new schools as inconsistent with the act of 1844?

The committee say, it appears to them, "from an examination of the act of 1844, in connection with the act of 1842, that the Legislature intended to vest the power of establishing new schools exclusively in the school officers named in these acts."

"The first section of the act of 1842," say the committee, "provides for the election of commissioners, inspectors and trustees of schools in the several wards of the city, and declares that these officers respectively shall have the like powers, and be subject to the same duties, with the commissioners and inspectors of common schools, and the trustees of school districts in the several towns of the state, except as therein after provided."

"Now, by reference to the powers and duties of commissioners, inspectors and trustees of common schools in the several towns of the state, it will be seen that the whole power of establishing common schools, *and the whole charge of them*, is vested in these officers, and in them exclusively."

That is to say, the common school system of the state takes in all the children, in every district. Therefore, when that system is extended to the city of New-York, as it was by the act of 1842, it is equally comprehensive here—it embraces all the children of the city. I mean to state the argument correctly.

Now, I wonder that the learned committee did not see that their argument proved too much. For, if this argument be sound, the very existence of the Public School Society, all its chartered rights, are inconsistent with the new system, upon the reasoning employed; but did the Legislature so regard it? No; for this very act of 1842 puts the schools of the Public School Society "under the jurisdiction of the commissioners of the respective wards in which any of the said schools now are, *or hereafter may be located*, subject to the direction of the Board of Education, but under the immediate government and management of their respective trustees, managers and directors, in the same manner, and to the same extent, as herein provided in respect to the district schools herein first before mentioned, in said city and county," &c. Here, then, the act of 1842 expressly provides for schools of the Public School Society *thereafter* to be located. Such new erections were not at that time regarded as inconsistent with the extension of the common school system of the state to the city of New-York.

The 7th section of this act provides for the organization of schools under the new system, and provides that none such shall be organized unless it can be certified, "that it is necessary to organize one or more schools in said ward, *in addition* to the schools mentioned in the 13th section." That is, in addition to the schools of the Public School Society, then or thereafter to be located in the respective wards. The act, however, did not, in express terms, provide any means for the erection of any new buildings by the Public School Society. This omission was evidently undesigned; for, in the amendment of the act, in 1843, it is provided, that "the trustees of the Public School Society may appropriate all moneys received by them by virtue of the act, to any of the purposes of common school instruction, including the support of Normal schools, which they were authorized by law to do before the passage of this act; provided always, that the fee of all real estate purchased under the act, "shall vest in the city and county of New-York."

Consequently, then, the new system introduced by the act of 1842, was not deemed by the Legislature inconsistent with the establishment of new schools by the Public School Society. Nor was it so deemed when the amended act of 1843 was passed.

Did the Legislature of 1844 mean to say the establishment of new schools by the Public School Society was inconsistent with the provisions of the act passed by that body? It is said this power was granted *exclusively* to the school officers named in the act. By the eighth section of this act, before the organization of any new ward school, it must appear that an *additional* school is necessary; that is, additional to the schools already organized. If there are a sufficient number of public schools in the neighbourhood of the contemplated organization, then no additional school shall be organized. The power, then, of the Public School Society to open new schools, is not inconsistent with the power of the ward officers to organize additional schools. If it were true, as a fact, that the new system must necessarily occupy the whole ground of common school education, then, of course, the power to build new school houses must be exclusive; but this is not true as a fact; the new system occupies not the whole, but additional ground. Now, the question comes, additional to what? I answer, additional to the schools, among others, of the Public School Society?—a corporation having schools, and possessing a chartered right to establish new schools.

But the committee describe the mode pointed out by the eighth section of the act of 1844, for the organization of a new school, and say, "In order, then, to establish a new school, a majority of the school officers of the ward must, in the first instance, determine that it is needed; and then they must apply to the Board of Education, stating the reasons of their application; and the Board of Education must investigate the matter, and grant and deny the application as they may deem best."

"Surely," say the committee, "such careful provisions in regard to the establishment of new schools, is entirely inconsistent with the idea, that the same power is concurrently given to a close corporation, with no responsibility as to the manner of its exercise."

Why are these careful provisions prescribed in the act? Because the money is to be raised by a special tax, imposed upon all the property of the city, for the express purpose of buying the land and erecting the school house. This tax is imposed, in effect, by the very men who make the scrutiny. The formalities, therefore, are required to determine the question; is the high, and extremely delicate function of government, the imposition of a tax, to be exercised? But if the Public School Society have the money, derived from private or public bounty, what objection can the Legislature have to its appropriation in the organization of a new school; especially as such organization may prevent the necessity of laying a tax to erect an additional school. Such ap-

propriation is not, certainly, inconsistent with the power vested by law in the ward officers, to organize additional schools.

That the intention was to provide for the establishment of additional schools only, is obvious enough, from the reading of the statute; but, beyond this, the cotemporaneous history of the school controversy, exemplifies the same truth. The schools of the Public School Society were always the favourites of the commissioners of school money, of the corporation of the city, of the Legislature of the state, and of the public at large.

There were never any complaints made against this society for infidelity in the expenditure of the many thousands of dollars entrusted to it. There were never any allegations, that it did not furnish a good and an economical education to the many thousand children instructed in its schools. Every investigation made—and there were many—showed that the management, order and discipline of the public schools in the city, were far preferable to those of country schools. The Legislature never meant to say or do any thing indicating an unfriendly feeling to the Public School Society. There were no facts to authorize such feelings; but it did come out, in the investigations made by the Legislature, that there were many children in the city of New-York, who, from prejudice, or some other cause, did not receive the advantages which the society proffered. The new system was therefore enacted, not to destroy the old schools, or retard the operations of the society, but to provide additional schools, which should take up the scholars whom the society could not, or did not reach.

Thus the two systems were intended, and wisely so, to operate side by side, under the supervision of this board.

And now let us ask, does not experience show, that the two systems mutually stimulate each other, to the great advantage of the pupils instructed in the schools? I am informed that the public schools were never better attended, were never more useful, and it will, I am sure, be admitted, that the ward schools have been greatly aided by the example of the public schools.

It is thus apparent that the Legislature did not intend to repeal the clear chartered right of the society to multiply the number of its schools.

Having shown that the Legislature never regarded the right of the Public School Society to open new schools, as inconsistent with the provisions of the act of May, 1844, and therefore that there never was an intention to repeal the portions of the charter conferring this right—the next question is, could the Legislature, if it had been so disposed, repeal the charter?

The report of the committee in discussing this point, refers to the case of *McLaren vs. Pennington*, 1 Paige's Reports, 107.

The following is a part of the marginal note in this case :

"The privileges and franchises granted to a private corporation, are vested rights, and cannot be divested or altered, except with the consent of the corporation, or by a forfeiture declared by a proper tribunal."

"A State cannot pass any law which alters or amends the charter of a private corporation, without the consent of such corporation."

"Yet," the committee say, "it is a principle equally well settled, that public corporations, or those whose powers are a public trust, to be executed for the common weal, are entirely within the control of the Legislature; that these powers are not vested rights as against the state, but that they may be abrogated as well by a general law affecting the whole state, as by a special act altering the powers of the corporation." In support of this principle, reference is made to the case of *People vs. Morris*, 13 Wend. 325, 331.

This was a case of alleged interference with rights granted in the charter to the village of Ogdensburgh, St. Lawrence Co. The defendant was indicted for selling *spiritous liquors* and *permitting the same* to be drank in his grocery store without having obtained a license as a *tavern keeper*. He admitted the sale of liquor, &c., but justified, under a license from the trustees of the village, to keep a grocery and victualling house in the village, in which to sell fruit, victuals and liquor." The act of incorporation of the village authorized "the trustees "to regulate and license grocers and keepers of victualling houses and ordinaries, where fruit, victuals and liquor shall be sold to be eaten or drunk in such houses or groceries." Under this authority a license was granted to defendant, and paid for by him.

The Supreme Court did not sustain the justification of the defendant under the village license, and they put themselves upon the ground that political power, conferred by the Legislature, could not become a vested right as against the government, in any individual or body of men.

Then the question is, Is the right to educate children, granted by the act of 1805, and confirmed by the act of 1826, political power, within the sense of this decision? If it be, it would seem to follow that the powers of our colleges and universities, granted by charter, which are powers to educate, are political powers, and not the subjects of private right. Yet we see that a very different doctrine was held by the Supreme Court of the United States, in the great case of *Dartmouth College vs. Woodward*, 4 Wheaton, 518. In that case there was a charter granted by the British crown to the trustees of Dartmouth College. An act of the Le-

gislature of New Hampshire was passed, altering the charter in a material respect, without the consent of the corporation. This act was declared to be unconstitutional and void. This case, I contend, is analagous to the one now under consideration. The powers granted to the Public School Society, are not political powers.

I have considered this point because I have been called to it by the position taken by the committee, and have thus been led to the discussion of the legal rights of the Society—not that I suppose the time will ever come when there will be a disposition to exercise these rights in opposition to the will of the Legislature. The society would probably shrink from a conflict with the Legislature.

It is thus manifest, that the Public School Society has a chartered right to build school houses, and open schools, that it was never the intention of the Legislature to take away, or interfere with that right, and that it had no right to take away such chartered right without the consent of the society, which consent has never been given.

Then the proposition of the committee, that the Public School Society, since the act of May 7, 1844, has no right to establish any new school, is untrue. As an abstract proposition, it is confessedly untrue.

The next proposition of the committee is, that if any such schools have been or may be established, that they are not entitled to participate in the apportionment of the school moneys.

This, too, is untrue; for the society has a legal right, as has been shown, to draw for all scholars, between the ages of four and sixteen years, educated free of expense in the schools within its jurisdiction. The schools opened since May 7, 1844, are confessedly within the jurisdiction of the society, so that there is no longer room for argument.

But the great practical question, after all, is—whence can the society obtain the means of opening new schools?

1st. It can borrow money, and mortgage its property for the payment thereof, under the act of 1829. Of this there can be no doubt in the mind of any man who will look at that act. The money so legally borrowed, is the property of the society; and having means, it can establish new schools.

2d. The society can participate in the apportionment of the school moneys, in the same manner, and to the same extent, as the ward schools. The manner is pointed out in section 6, of the act of 1844. The extent is defined in section 12: "It shall be the duty of the Board of Education, to apportion all the school moneys, except so much as shall have been raised for the purpose

of organizing and establishing new schools, to each of the several schools provided for by this act, *according to the number of children, over four and under sixteen years of age, who shall have actually attended such school without charge the preceding year.*"

The society's schools, and the ward schools, alike, draw from the fund, according to the number of children taught; they participate *per capita*. There is, then, no doubt as to the rule by which the money shall be received. For what purposes can it be used? Section 12 provides, that if the money apportioned agreeably to that section, shall exceed the necessary and legal expenses of either of the schools or societies provided for in the act, the balance shall be paid into the city treasury.

Then the Public School Society can use the money it receives to pay its necessary and legal expenses. What are these? The necessary expenses of a school, for supplying gratuitous education to all children whom it can accommodate and instruct, are easily indicated. There must be one or more teachers; there must be fuel, school furniture, stationery, and a house; all these must be paid for, and the expenses therefor are *necessary* expenses. They are legal expenses, too, if the objects named are within the scope of the purposes for which the fund was originally created by law. Now, what are these purposes? Section 5, of the act of 1844, defines them; they are, *purposes of common schools in the city of New-York*. This section provides, that there shall be raised by tax, a sum equal to that received from the school fund, and also ~~one~~ twentieth of one per cent. on all assessable property in the city of New-York, and *to be applied exclusively to the purposes of common schools in said city*. Then, if salaries of teachers, fuel, school furniture, stationery, and a house, objects, all of which are necessary to the existence and operations of common schools, are comprehended in purposes of common schools, the expenses necessary to procure them, are both necessary and legal expenses, under sec. 12, already referred to.

What objects were included in the purposes of common schools in the city of New-York, before the passage of the act of May, 1844?

I first notice the act, entitled, "An act relating to Common Schools in the City of New-York," passed November 19, 1824. The provisions of this act require, that an equal amount received from the school fund shall be raised by tax; and the aggregate amount shall be deposited in a bank, to the credit of commissioners of the school fund. The act farther provides, that the institutions or schools entitled to receive said school moneys shall, once in three years, be designated by the corporation of the city of New-York, who shall have power to prescribe the limitations

and restrictions under which said moneys shall be received by said institutions or schools, or any of them.

Under this law, the corporation of the city of New-York, by ordinance, designated the institutions and schools which should participate in the fund; and they provided that every other institution and school, besides the Public School Society, should receive only a sufficient amount to pay teachers employed, but that this society was authorized to apply any surplus, after paying the salaries of teachers, to the erection of buildings for schools, and to all the useful purposes of a common school education. By the judgment, then, of the corporation, the school fund, without any special designation thereto by the Legislature, could be appropriated to the erection of buildings, and all the needful purposes of education in common schools. By an act passed April 25, 1829, the corporation of the city of New-York is authorized annually to raise and collect by tax a sum equal to one 80th of one per cent. of the value of the real and personal property in the city liable to assessment, to be applied *exclusively to the purposes of common schools in the said city.*

By another act, passed April 13, 1831, the corporation is authorized to lay an additional amount, to be applied *exclusively to the purposes of common schools in said city.*

Thus the Legislature authorized the funds to be raised, defining the object to be, generally, for the purposes of common schools—but not specifying what particular objects were comprehended within those purposes. The corporation could prescribe the limitations and restrictions under which each society or school should receive the fund, but it could not enlarge the purposes for which the fund was created. With this power only, the corporation settled, by ordinance, that building school houses, purchasing stationery, &c., were purposes of common schools, as well as the payment of teachers. Under this practical construction of the law, before the act of 1842, the school moneys for this city were distributed, for nearly twenty years, without objection or complaint, either from the superintendent of common schools, or the Legislature, who were annually informed of the mode of distribution.

The same language to designate the object of the fund, is employed in section 5 of the act of 1844, as was previously employed in the acts of 1829 and 1831. Does it not, then, follow, that this fund can be now used for like purposes—that the fund, similarly created and described, had been used with manifest approbation?

If there were no other enactment in the act of 1844 for raising money by tax, then beyond all controversy this question must be answered in the affirmative. The words, “the purposes of com-

mon schools," in the 5th section, would embrace all the purposes of common schools; and "the necessary and legal expenses" of the Public School Society, would be those expenses to which it was subjected in accomplishing any or all of these purposes.

But it is said the act of 1844, besides the fund composed of the school moneys, and the equivalent tax raised in the city, and the farther tax of one 80th of one per cent., to be applied exclusively to the purposes of common schools, provides a mode, in the same section 5, for raising and collecting an additional sum for erecting, purchasing or leasing school houses, and procuring sites therefor, and the fitting up thereof. Now, because the objects last specified are specially provided for in the act, it is said they cannot be embraced in the provisions for creating the other fund, although the terms of those provisions are sufficiently comprehensive to embrace the same objects. With great respect, I deny this conclusion; it is unsound and illogical. The additional provision for raising money, for some of the purposes of common schools, shows that, in the judgment of the Legislature, more funds were required for these purposes, but it by no means proves that the same purposes were not comprehended under the general expression, "purposes of common schools." The new system required new houses, and it demanded more aid for this purpose than could be supplied by the fund as formerly constituted. To supply houses, therefore, for this new system, required an additional source of revenue; but the opening of that source did not change the character of the old fountain of supply: that remains as before.

Under the act of 1844, then, the Board of Education receives the school money; it apportions it among the schools and societies mentioned in the act, to be by them applied to the purposes of common schools in the city of New-York. The purposes of common schools have been defined by established usage. What these purposes are, is settled by approved custom. Among others, they are the payment of teachers' salaries, the purchase of stationery, fuel, and school furniture, the hiring of rooms, and the erection of buildings for schools.

Although the erection of buildings for schools is clearly one of the purposes of common schools, yet, in the apportionment of school money for a single year, as this board is bound to apportion, it might, perhaps, admit of a doubt, whether a purpose so permanent, looking forward to many years in the future, could properly be provided for in such annual apportionment. I say it might admit of a doubt, unless the board can find evidence, in the act itself, that such erections were contemplated by the Legislature. Is there such evidence in the act of 1844? The last sentence in the 11th section of this act, is in these words. "Titles to all

school property, real and personal, hereafter purchased from all moneys derived from the distribution of the school fund, or raised by taxation in the city of New-York, shall be vested in the Mayor, Aldermen and Commonalty of said city."

This sentence contemplates, that real estate might be purchased with money derived from the distribution of the school fund. How could there be any such money, unless there happened to be a surplus after the payment of teachers, &c. This surplus had generally been found in the schools of the Public School Society. If the surplus could not be used in the erection of school houses, it would have to go back to the city treasury. If, as seems to be contemplated in the sentence quoted, it could be used for the purchase of real estate, the title to that estate was made to vest in the corporation. To me it seems that the words quoted are entirely insensible, unless they recognise the fact, that, as in all former times, since 1817, had been the practice, the Public School Society should have the right to vest the surplus in real estate. It will be remembered, that section 11 makes provision for the schools of the Public School Society, and other corporate schools, and it was not necessary to use the sentence quoted, in order to vest the title to the real estate purchased for ward schools, in the corporation; that had been done before, at the end of section 9. Connect these considerations with the fact, that, in the amendatory act of 1843, the power to use the school fund for the purchase of real estate, was clearly given to the Public School Society, and the title to such estate was made to vest in the corporation; and it seems to me, the intention of the Legislature cannot be doubted.

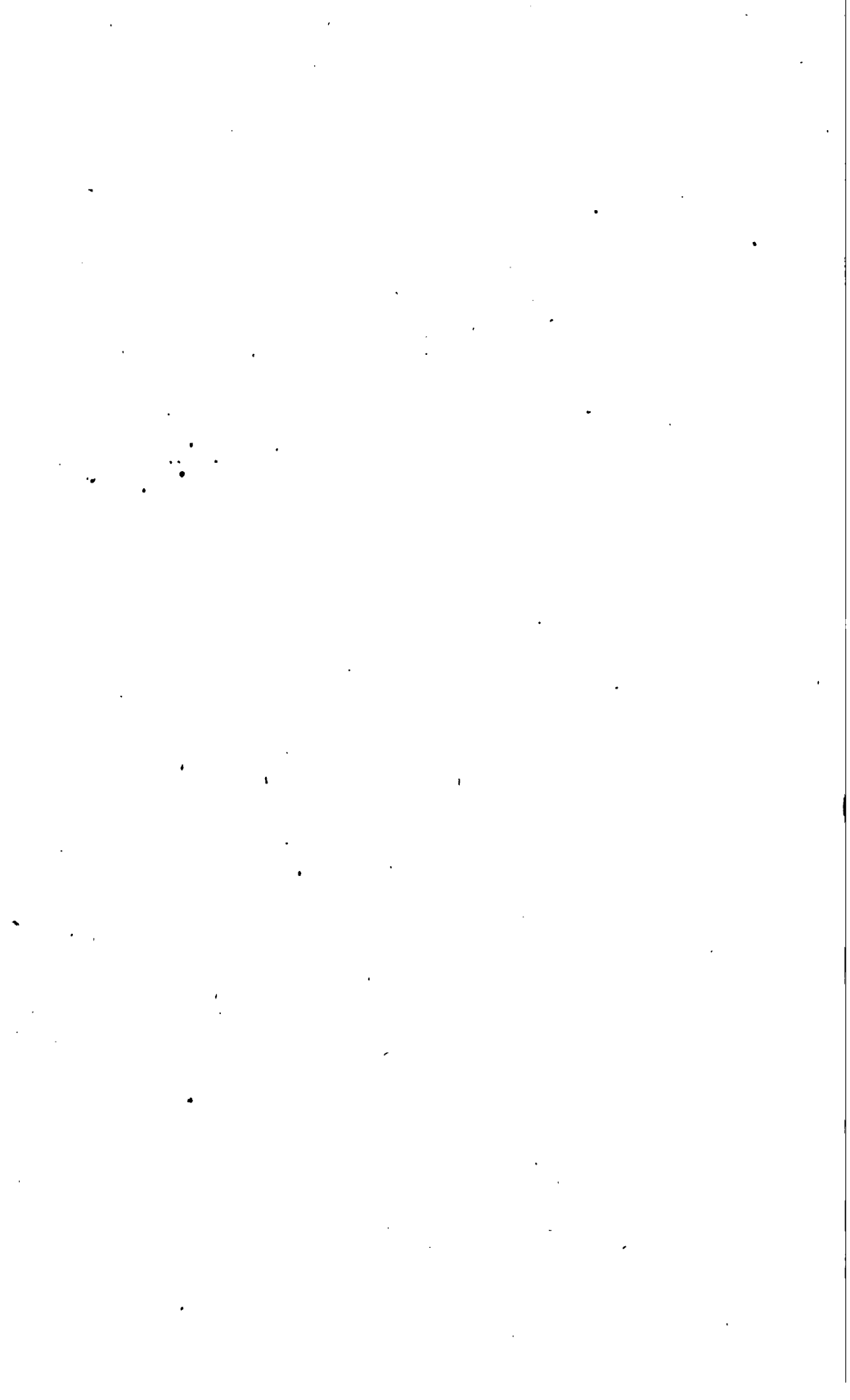
Yet still I confess that intention has not been as clearly expressed as I could desire; and if this board entertain a serious doubt as to its right to allow the Public School Society to use the school moneys for the erection of school houses, although the title should be vested in the corporation, then I would respectfully suggest that it unite with the Public School Society, in an application to the Legislature, now in session, to pass a short declaratory act, making that clear which now seems obscure.

In such an act I am willing that there should be inserted a provision that the Public School Society should not erect a new building, unless the location were approved by this board.

It will be readily seen, that under the increased expenses of the society, growing out of the new order of things, there will probably be very little surplus moneys remaining in its hands; yet I respectfully suggest, that the same right to use that surplus, heretofore enjoyed, should be still retained.

With these remarks, the whole subject is respectfully submitted.









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